

# New Jersey State Tax News

## Summer 1995

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### **Extension Requests**

There has been much confusion among taxpayers as to the requirements for obtaining and keeping a valid extension of time to file a New Jersey gross income tax return. The Division has proposed changes to N.J.A.C. 18:35-1.18 in an effort to clarify and simplify the application and payment requirements a taxpayer must satisfy to obtain an extension of time to file a gross income tax return.

Under the proposed rule, a taxpayer may obtain a four month extension of time to file the New Jersey resident, nonresident or fiduciary income tax return (Form NJ-1040, NJ-1040NR or NJ-1041)

provided that at least 80% of the actual tax liability is paid in the

form of withholdings, estimated provided that at least 80% of the actual tax liability is paid in the form of withholdings, estimated payments or a payment made with an Application for Extension of Time to File (Form NJ-630), and the taxpayer either (1) obtains a valid four month extension for Federal purposes and attaches a copy of such application to the New Jersey gross income tax return when filed, or (2) completes and submits Form NJ-630 by the original due date if no Federal extension is requested.

If the taxpayer is unable to file the return within the four month extension period, the taxpayer may

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### **Interest 11.5% for Second Quarter**

The interest rate assessed on amounts due for the second quarter of 1995 is 11.5%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%

### *important phone numbers*

Tax Hotline.....	609-588-2200
Recorded Tax Topics .....	
.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Mergers, Withdrawals & Dissolutions.....	609-292-5323
Corp. Tax Liens.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
.....	609-292-5035
.....	609-292-7147
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

*extensions - from page 1*

obtain an additional two month extension, for a total of six months. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

In an attempt to reduce the number of filings required by taxpayers, the proposed new rule eliminates the need for a taxpayer to file Form NJ-630 to obtain an additional two month extension if an additional two month Federal extension is approved and a copy of such approval is attached to the taxpayer's New Jersey gross income tax return when filed.

Taxpayers must still file Form NJ-630 if (1) no extension is obtained for Federal purposes, or (2) a payment must be made to satisfy the requirement that 80% of actual tax liability be paid by the original due date of the return. □

## Annual Use Tax Return

In an ongoing effort to simplify filing procedures and assist filers in complying with the law, the Division of Taxation is currently working on regulations that would change the requirements for filing sales and use tax returns and provide an annual use tax return for businesses not operating as vendors. □

## CORPORATION TAX Refunds and Assessments

The Division has proposed amendments to N.J.A.C. 18:7-13.1 and 13.8 which make minor modifications to reflect current Division practice and the language of the Uniform Procedure Law at N.J.S.A. 54:48-7 regarding transition provisions for P.L. 1992, c.175, N.J.S.A. 54:49-6(b), the provision on assessments and N.J.S.A. 54:49-14, the provision on refunds.

### Assessments

Under N.J.A.C. 18:7-13.1(b), as proposed to be amended, the statute for assessments is five years from the date the return or amended return was filed, for liabilities accruing prior to July 1, 1993, and four years from the date the return or amended return was filed for tax liabilities accruing on and after July 1, 1993. In accordance with N.J.S.A. 54:49-7(b), any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. Note that the exceptions in 18:7-13.1(b)1-3 remain in place: the Director may assess any time where no return was filed, and if the return is filed before or after the due date, the statute of limitations starts running from the due date or filing date, whichever is later.

### Examples:

1. Corporation A's 1992 CBT return is due April 15, 1993 and filed March 1, 1993. The Division has until April 15, 1998 to assess additional tax under 18:7-13.1(b)3, five years from the April 15, 1993 accrual date of the tax liability,

because the tax liability accrued prior to July 1, 1993.

2. Corporation B's 1993 CBT return is due April 15, 1994 and filed March 15, 1994. Corporation B files an amended return on August 15, 1994. The Division has until August 15, 1998 to assess additional tax under N.J.A.C.

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*refunds & assessments - from pg. 2*

18:7-13.1(b)3, four years from the filing of the amended return, because the amended return relates to a tax liability accruing on April 15, 1994, after July 1, 1993.

3. Corporation C's 1990 CBT return was due and filed on April 15, 1991. The Division has until April 15, 1996 to assess additional tax, five years from April 15, 1991. Pursuant to N.J.S.A. 54:48-7(b) and N.J.A.C. 18:7-13.1(b) as proposed to be amended, any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect.
4. Corporation D's 1993 CBT return is due on April 15, 1994 and filed March 15, 1994. The Division has until April 15, 1998 to assess additional tax, four years from the April 15, 1994 accrual date of the tax liability. The tax liability accrued on April 15, 1994, after July 1, 1993, and therefore the four year statute of limitations is applicable.
5. Corporation E's 1992 CBT return is due and filed on April 15, 1993. The Internal Revenue Service changes the amount of taxable income and the taxpayer files an amended return August 15, 1994 to reflect the change. The Division has until August 15, 1999 to assess additional tax, five years from the filing of the amended return, because the amended return relates to a liability accruing on April 15, 1993, prior to July 1, 1993. If

the liability had accrued on April 15, 1994 and the amended return filed on August 15, 1995, the Division would have until August 15, 1999 to assess additional tax, four years from the filing of the amended return, because the liability would have accrued on April 15, 1994, after July 1, 1993.

6. Corporation F's 1991 CBT return was due and filed April 15, 1992. On February 1, 1997, the corporation consents in writing to a six month extension of the assessment period. The Division has until October 15, 1997 to assess under N.J.A.C. 18:7-13.1(c), five years from April 15, 1992 plus the six month extension to which the corporation consented in writing.

### Refunds

The same approach regarding accrual is applied to the statute of limitations on refund claims under N.J.A.C. 18:7-13.8.

### Examples:

1. Corporation A files its 1992 CBT return on April 15, 1993. On May 1, 1995 the corporation files an amended return and a claim for refund. The refund claim is barred because the two year statute of limitations for refund claims expired on April 15, 1995. Pursuant to N.J.S.A. 54:48-7(c) and the proposed amendment to 18:7-13.8(a), all claims barred by the two year statute of limitations on July 1, 1993 shall continue to be barred.
2. Corporation B files its 1993 return on

April 15, 1994. On August 1, 1995 the corporation files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (Form 1041-100) which results in a diminution of entire net income. The corporation has until August 1, 1999 to file a refund claim under 18:7-13.8(d), four years from the filing of the 1041-100, because the claim accrued after July 1, 1993. □

## **CORPORATION TAX Activity Required for Nexus**

As a result of *Pomco Graphics, Inc. v. Director, Division of Taxation*, 13 N.J. Tax 578, the Division has revisited the question of the degree of corporate activity in New Jersey which would require a corporation to file a New Jersey Corporation Business Tax return and subject it to paying, at the very least, the minimum tax.

N.J.S.A. 54:10A-2 imposes upon every domestic and foreign corporation, not otherwise exempt, a tax for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State.

As a result of *Pomco*, foreign corporations who solicit orders for sale of tangible personal property from customers in New Jersey, approve the order outside of New Jersey, and ship from outside of New Jersey and have all the other attributes affording protection under Public Law 86-272, meet the requirements of subjectivity under

*nexus - from page 3*

N.J.S.A. 54:10A-2 and have sufficient connection with this State for New Jersey to require it to file returns and pay a minimum tax. The presence of an employee who simply solicits orders or engages in activities ancillary to requests for an order is nevertheless exercising its corporate franchise and "doing business" here and we will require the filing of a New Jersey Corporation Business Tax return and the payment of a minimum tax. □

### **GROSS INCOME TAX Form 1099 Filing Requirements**

Pursuant to N.J.S.A. 54A:8-6 and N.J.A.C. 18:35-1.8, all persons having the control, receipt, custody, disposal, or payment of interest, rents, salaries, wages, premiums, annuities, compensation, remuneration, etc. are required to file a copy of the Federal information return (Form 1099) on or before February 15 following the close of each calendar year. The Division will, however, consider such forms timely filed if they are submitted no later than the Federal filing deadline of February 28.

Form 1099 must be filed with the Division of Taxation, CN 248, Trenton, New Jersey 08646-0248. Such requirements may be satisfied by providing a copy of the magnetic tape provided to the IRS or copies of all forms submitted for amounts of \$1,000 or more.

A penalty of \$2.00 may be imposed on a payor for each statement he fails to file unless it is shown that such failure is due to reasonable cause and not to willful

neglect. The total penalty imposed on the delinquent payor shall not exceed \$2,000. N.J.S.A. 54A:9-6(h). In addition, any taxpayer failing to file a return may be liable for a late filing penalty of \$100 for each month or fraction thereof that the return is delinquent. N.J.S.A. 54:49-4. Finally, any person who recklessly or negligently fails to file any return or report required by any State tax law may be guilty of a disorderly persons offense. N.J.S.A. 54:52-6. □

### **CORPORATION TAX Meals and Entertainment on CBT-100S**

A New Jersey S corporation is permitted to deduct the portion of meals and entertainment expenses that is not deductible for Federal purposes in computing the New Jersey S corporation income that is passed through to its shareholders. An entry should be made on Schedule K, Part II, Line 4 of the 1994 Form CBT-100S to indicate the meals and entertainment expenses not deductible for Federal purposes. A rider explaining the entry should be attached to the return, since Line 4, Part II of Schedule K is normally used for entering Section 179 expense from the Federal Schedule K.

In computing the 2.35% Corporation Business Tax, any meals and entertainment expenses not deductible for Federal purposes would not be deductible in computing the New Jersey Corporation Business Tax, and would be reported on Schedule C as a book expense not deducted on the tax return. □

*new york credit - from page 4*

### **GROSS INCOME TAX Calculation of Credit For Tax Paid to New York**

Numerous tax protests are received based on New York's inclusion of worldwide income to determine the New York tax rate. Taxpayers typically argue that New York is effectively taxing New Jersey source income; therefore, they are entitled to take into account the "effectively" taxed amount when computing their resident credit. N.J.S.A. 54A:4-1.

On audit the claimed credit is reduced to the actual amount factually and legally taxed by New York. The Conference and Appeals Branch has routinely upheld the auditor's findings on this issue. The Director's Final Determination has been challenged by several taxpayers in the Tax Court of New Jersey. Three such cases have been decided, all in favor of the Director. These decisions identify and affirm the Director's standard against which similarly situated taxpayers will be measured.

See *Geeming Chin v. Director*, 14 N.J. Tax 304 (1994); *Charles J. Widder v. Director*, 14 N.J. Tax 349 (1994); and *Thomas J. Carroll v. Director*, decided April 8, 1994, Bench Opinion, Tax Court Docket No. 005786-93; aff'd. March 16, 1995, Superior Court of New Jersey, Appellate Division, Docket No. A-005573-93T2.

In his opinion in *Carroll*, Judge Lasser stated that what the plaintiff proposed was that "if some other state taxes more severely than we do, ...we have to give up our tax

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on New Jersey source income on our own residents. And that was never the intent of the legislature.”

Judge Lasser went on to say, “The intent of the legislature was to say that if you have New York source income that New York is taxing we also have the right to tax that because you are a New Jersey resident. But if New York taxes it, then we’ll give you a credit based on the New York source income that New York taxes. But we’re not going to give up our New Jersey tax on New Jersey source income just because New York is taxing you at a higher rate on your New York source income. And that’s what happens, isn’t it? The rate of tax on your New York source income is higher than it used to be because of the manner in which New York calculates it.” □

### **CORPORATION TAX IRC Section 338(h)(10) Change in Position**

The Division has received numerous inquiries concerning its position in light of the change in Federal treatment regarding certain transactions under Section 338(h)(10) of the Internal Revenue Code. Specifically, this change allows a corporation which is a member of a selling affiliated group filing a separate return to make an election under IRC Section 338(h)(10).

As a result of this change, the Division will no longer require the inclusion of the gain or loss arising from the sale of the target corporation’s stock in the net income base of the seller. This change has been made effective for acquisition

dates occurring on or after January 14, 1992. □

### **INHERITANCE/ESTATE TAX *No Attorney Needed for Property Transfer***

The New Jersey Supreme Court recently ruled that it is no longer necessary for a buyer or seller of real property in New Jersey to be represented by an attorney. The ramifications of this decision are, of course, many and varied.

The Transfer Inheritance and Estate Tax Branch reminds those responsible that, when real property is being transferred from the estate of a deceased person, a Consent To Transfer (Waiver), issued by the Branch, is required in order to transfer clear title to the property. Failure to obtain a proper waiver will result in the State of New Jersey’s having a lien on the property for a minimum of the statutory period of 15 years after date of death.

Depending upon existing circumstances, there are differing ways in which necessary waivers may be appropriately secured.

A waiver may be acquired by filing the appropriate inheritance tax return with payment of the proper tax. Waivers are then automatically issued in the due course of business. The IT-R Form is used for a decedent who was a resident of New Jersey and Form IT-NR for non-resident decedents.

When it is impossible to file a completed inheritance tax return for the estate of a resident decedent, a preliminary return, Form L-4, may be filed and, on the basis

of the information contained therein and otherwise available to the Branch, necessary real property waivers may be issued. However, this is a preliminary return and all necessary waivers will not be issued until warranted on the basis of the filing of a completed return.

When the entire estate of a resident decedent is passing to Class “A” beneficiaries, a complete return may not be required and a waiver necessary to properly transfer the decedent’s interest in real property may be obtained by the proper filing of Form L-9. Class “A” beneficiaries consist of a decedent’s spouse, parent, grandparent, child, stepchild or legally adopted child, or a grandchild of the decedent.

It is important to understand that the waiver issued by the Branch covering a decedent’s interest in New Jersey real property is currently the only legitimate way in which the lien of the State may be automatically released.

Further information and/or forms are available by calling the Inheritance Tax Branch at 609-292-5033; 609-292-5035; 609-292-7147; or 609-777-4559. □

## **LOCAL PROPERTY TAX Proof Needed for Veterans' Property Tax Exemption**

Questions are often received by Property Administration (Local Property Branch) concerning documentation needed to confirm total or 100% permanent disability for honorably discharged New Jersey resident war veterans claiming full property tax exemption.

Through contact with the U.S. Veterans' Administration (U.S. Department of Veterans' Affairs) via the New Jersey Department of Military and Veterans' Affairs, it was reestablished that the following conforming language as contained in VA issued statements certifies total or 100% disability for purposes of qualifying for full property tax exemption:

"This is to certify that the records of the U.S. Department of Veterans' Affairs (VA) disclose that your wartime service-connected disability is totally disabling. A 100% permanent and total evaluation was assigned effective (DATE) in accordance with the VA Rating Schedule and not so evaluated because of hospitalization or surgery and recuperation. The records further indicate that you served in the U.S. (BRANCH OF MILITARY SERVICE) from (START DATE) to (END DATE) and received an honorable discharge. The above statement is issued in accordance with N.J.S.A. 54:4-3.30 et seq."

It should be remembered that veterans of the recent peacekeeping missions, Panama, Lebanon, Grenada, and Operation Desert Shield/Desert Storm-Arabian peninsula and Persian Gulf, must have

combat zone time either in those nations or regions or on board ship patrolling the territorial waters of those nations or regions for at least 14 days. However, any person receiving a service-incurred injury or disability shall be considered a veteran whether or not 14 days service has been completed. To verify combat zone service Items 13, 18 and 12a-c, f & g of the DD214 or Certificate of Release or Discharge from Active Duty should be reviewed. Key indices for Lebanon, Grenada and Panama veterans are "Overseas Deployment Medal" in Item 13 and the notation "Participation in Lebanon, Grenada and/or Panama peacekeeping mission" and the start-end dates in Item 18. Items numbered 12 also provide dates of service. The Armed Forces Expeditionary Award for Marine Corps or Navy Expeditionary Award are other indicators. For Persian Gulf veterans key indices are "S.W. Asia Service Medal" or "Overseas Service Ribbon" in Item 13 and the notation "Participated in Operation Desert Shield/ Storm under Title 10 U.S.C. 673" and the dates in Item 18. □

## **LOCAL PROPERTY TAX Tax Assessors' Calendar**

### **July 1—**

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Deadline for assessor to mail the form to claim a continuance of valuation under the Farmland

Assessment Act for the tax year 1996 together with a notice that the completed form must be filed with the assessor by August 1, 1995 to each taxpayer whose land was assessed for tax year 1995 under the Act.

### **2nd Tuesday in July—**

- State Equalization Table reviewed.

### **August 1—**

- Deadline for all owners of farmland to file an application (Form FA-1) with the assessor.

### **August 5—**

- Deadline for all SR-1A forms showing information to be used in compiling the 1995 Table of Equalized Valuations for State School Aid to be received by Property Administration.

### **August 15—**

- Deadline for County Board of Taxation Presidents to annually file a report to the Director, Taxation.

### **August 25—**

- Deadline for the completion of State Equalization Table by Director, Taxation.

### **September 1—**

- Extended deadline to file Form FA-1 where assessor has determined that failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns of local exchange telephone, telegraph and messenger systems companies, with respect to tax year 1996 and thereafter, are required to be filed with the assessor for the

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*busy tax hotline* from page 6

taxing district in which the said property is located.

#### **September 13–**

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

#### **September 15–**

- Deadline for assessor to file statement of taxable value of State-owned real property with the Director, Taxation. □

### **LOCAL PROPERTY TAX Tax Assessor Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Twenty-nine persons passed the examination for the tax assessor certificate held on March 25, 1995:

**Bergen County:** Robert Appaluccio, Lyndhurst Township; Marie Merolla, Ridgewood Village.

**Burlington County:** Jerome J. McHale, Medford Township.

**Essex County:** Geoffrey Gregg, Montclair Township.

**Gloucester County:** Karen Mitchell, West Deptford Township.

**Hudson County:** Eduardo C. Toloza, Jersey City.

**Hunterdon County:** Debra L. Blaney, Readington Township; James R. McDonald, Clinton Township; Anna Christy Peacock, East Amwell Township.

**Mercer County:** Robert P. Esposti, Hamilton Township; John M. Gapszewicz, Trenton City.

**Middlesex County:** Francine Napoli, Old Bridge Township; Joel R. Sevinsky, Middlesex Borough.

**Monmouth County:** Gary P. Foulks, Atlantic Highlands Borough; William J. Schulster, Fair Haven Borough; Paul A. Simon, Little Silver Borough; James A. Stuart, Colts Neck Township.

**Morris County:** Sandra L. Duvall, Parsippany-Troy Hills Township.

**Ocean County:** Raymond A. Birchler, Beachwood Borough; Richard B. Froelich, Island Heights Borough; Rosalind Mohr, Dover Township; Kathleen D. Ureneck, Lavallette Borough.

**Passaic County:** Jean A. Gambatese, Paterson City; Mark A. Wise, Hawthorne Borough.

**Somerset County:** Ernest F. DelGuercio, Jr., Bridgewater Township; Samuel M. Kearton, Bridgewater Township; Harry V. Keefe, III, Bernards Township.

**Union County:** Michael J. Timoni, Clark Township.

**Warren County:** Bernard Murdoch, Hackettstown Town.

The next exam will be held on September 30, 1995. The last date for accepting applications for this exam will be August 31, 1995. Admission to the exam will be by application only. Individuals retaking the exam must reapply. There is a filing fee of \$10.00. □

## **Spill Tax Update**

Technical Bulletin #TB-16, which contains guidelines for the Spill Compensation and Control Tax, was reissued on March 1, 1995. To obtain a copy of the updated bulletin, contact the Division's Tax Hotline at 609-588-2200.

For more information on the Spill Compensation and Control Tax or to obtain forms, call the Division's Miscellaneous Tax Branch at 609-984-7171 or write to the Division of Taxation, Miscellaneous Tax Branch, CN 265, Trenton, NJ 08646-0265. □

## **Busy Tax Hotline**

Taxpayer Services had a busy and successful tax season recording more than 500,000 calls from taxpayers. Tax Hotline employees answered 226,707 calls from taxpayers calling with questions and requesting help in completing tax returns. In addition, the automated voice response system accepted 297,508 calls. Of these nearly 300,000 calls, form order requests accounted for 17,803 calls; a total of 113,846 taxpayers selected one of the many tax scripts available on Tax Talk; and 165,859 taxpayers called the Automated Refund Inquiry System to inquire about their current year refund.

NJ TaxFax received 16,000 calls from people requesting that forms be instantly faxed to them. NJ TaxFax, available by calling 609-588-4500, continues to grow in popularity as the Division increases the number of tax forms and publications available on the NJ TaxFax menu. □

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## **Criminal Enforcement**

Criminal Enforcement over the past several months included:

- On February 1, 1995, Eugene Slusker doing business as Pentagon Management Company was indicted by the State Grand Jury for failing to remit \$355,467 in New Jersey motor fuel taxes.
- A prosecution report was submitted for a case involving the filing of fraudulent NJ income tax returns for the 1990 through 1993 tax periods. The taxpayer illegally received refunds in excess of \$31,200 for which she was not entitled.
- Amended PGRT returns filed by a taxpayer currently under criminal investigation resulted in an increase of reported taxable gallons of 63,750,596 with a taxable liability of \$2,550,024. The returns previously filed for the same periods (October 1, 1991 through December 31, 1992) indicated that the company had no taxable distribution.
- On March 9, 1995, an 18 count indictment was handed down by the State Grand Jury against nine individuals and one corporation for conspiracy to defraud both the Federal and State governments of motor fuel taxes. PGRT taxes identified are in excess of \$150,000. This is an ongoing investigation with the NJ Division of Criminal Justice.
- On February 23, 1995, Melvin Shaw doing business as Shaw Motor Sport was indicted by the Camden County Grand Jury for failing to remit \$36,004.92 in New Jersey sales taxes, misap-

propriating money collected on behalf of the State of New Jersey and presenting false documents to the Division.

- The Division of Criminal Justice in a negotiated settlement has arranged for the payment of \$250,000 in sales tax and Atlantic City Luxury Tax for admissions to shows staged by a production company. The initial payment of \$150,000 has been received. The remainder will be made in monthly installments of \$10,000.
- As part of a plea agreement with two officers of JSM Trenton, Inc., each will pay restitution of \$12,409.50 representing unpaid sales tax and penalty and interest charges. The consent to admission into Pre-trial Intervention is contingent on these payments. □

## **Enforcement Summary**

### **Civil Collection Actions**

#### **Quarter Ending - Mar. 31, 1995.**

Following is a summary of enforcement actions for the quarter ending March 31, 1995.

#### **Certificates of Debt**

Field Investigators secured 603 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$16.3 million.

#### **Levies**

\$1.8 million was collected by Field Investigations as a result of executing against 337 non-compliant taxpayers.

#### **Seizures**

When a liability, for which the Division of Taxation has secured

*enforcement summary - from page 8*

judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles etc., until arrangements are made for payment of the debt.

For the quarter ending March 31, 1995, 26 businesses were seized. Some businesses were able to reopen, others remain closed. A listing of seized businesses appears on pages 11 and 12.

#### **Auctions**

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. A public auction of the business assets will be conducted in about 30 days.

During the quarter ending March 31, 1995, nine auctions were held by the Division. A listing follows on page 12.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

## **Tax Briefs**

### **Corporation Business Tax**

#### **S Corporation Distributions**

The Division received a letter concerning a New Jersey corpora-

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tion that is a Federal S corporation, and has elected to be a New Jersey S corporation effective January 1, 1994. The corporation has accumulated earnings earned as a "C" corporation prior to its New Jersey election. The corporation has both New Jersey resident and nonresident shareholders.

The inquiry asked if the corporation earns profits in its first year as a New Jersey S corporation and makes distributions to its shareholders, are the S corporation's distributions treated as first being made from the New Jersey accumulated adjustments account until it is reduced to zero and then deducted from the accumulated C corporation earnings. The Division replied that this is the case.

In making distributions the Division advised the corporation to follow LIFO principles similar to those under the Internal Revenue Code. Here, in this situation, the Division does not follow the principles as set forth in *Laurite v. Taxation Div. Dir.*, 12 N.J. Tax 483 (1992), *aff'd*, 14 N.J. Tax 166 (App. Div. 1993), *cert. denied* 135 N.J. 301 (1994), which predated the 1993 statutory changes. Thus, distributions are considered first to come out from the 1994 period (current year's earnings) then from 1993, for example.

If derived from earnings and profits, the distributions made to the New Jersey resident shareholder are taxable dividends pursuant to N.J.S.A. 54A:5-1 f, as amended by P.L. 1993, c.173. Such dividend distributions would not be taxable to a nonresident as they would be considered intangible income.

**Regulated Investment Companies** — Under IRC 851(h)(1) each portfolio within a series fund or

corporation is generally treated as a separate taxpayer and therefore, files a separate Federal corporate income tax return. For fiscal years beginning after December 31, 1986 each portfolio of a series fund or corporation obtained a Federal Employer Identification Number (FEIN) and filed a separate Federal corporate income tax return. For State purposes separate New Jersey returns have been timely filed indicating the new FEIN but with the same New Jersey corporation number.

The New Jersey Corporation Business Tax Act (1945), N.J.S.A. 54:10A-1 et seq. is a franchise tax. Every domestic and foreign corporation not exempted pays an annual franchise tax for the privilege of having or exercising its corporate franchise in New Jersey, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in the State. N.J.S.A. 54:10A-2. The tax for a regulated investment company is \$250.00. N.J.S.A. 54:10A-5(d).

Since this tax is a corporate franchise tax for the privilege of doing business in New Jersey, each corporation is required to file one return, and multiple returns for the same corporation for the same taxable period would not be proper for franchise taxpayers. Accordingly, for New Jersey State purposes each separate portfolio of a series corporation is not required or permitted to file a separate corporation tax return simply because a separate Federal return is required. A single return should be filed for State purposes for each corporate entity. Copies of each Federal return for components of that entity (or fund) should be at-

tached to the New Jersey return as filed.

**Gross Income Tax**  
**Nonqualified Deferred Compensation Plan** — The Division replied to a request for information regarding the gross income tax consequences to employees who defer a portion of their salary and/or bonus into a nonqualified, unfunded deferred compensation plan.

The plan in question allows eligible employees to participate in the plan. Prior to the Plan Year participants make certain irrevocable elections regarding the deferral of all or part of their base salary and prospective bonus compensation. In addition, each participant makes elections as to the allocation of the deferrals between a Retirement Distribution Account and an In-Service Distribution Account, as well as the date on which the deferrals will be paid from each account. The election must be made before the beginning of the Plan Year. Because the plan is unfunded the participants are not guaranteed to receive the money.

In order to determine when income is to be reported, the Gross Income Tax Act requires that a taxpayer's accounting method be the same as his accounting method for Federal income tax purposes. N.J.S.A. 54A:8-3(c). Under Federal income tax accounting methods a cash basis taxpayer must report income in the taxable year in which it is actually or constructively received. A taxpayer constructively receives income when cash or property is credited to his account or is made available for withdrawal and is not subject to substantial limitations or restrictions. *Smoyer v. Taxation*

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*Div. Director*, 4 N.J. Tax 42, 46 (1982); *Treas. Reg.* 1.451-2(2) (1957).

Deferred compensation is not taxable income to an employee until actually received, provided the following conditions are satisfied:

1. The deferral is agreed to before the compensation is earned;
2. The deferred amount is not unconditionally placed in trust or escrow for the benefit of the employee; and
3. The promise to pay the deferred compensation is a contractual obligation not evidenced by notes or secured in any way.

If all three conditions are satisfied the compensation will not be deemed to be constructively received. If the deferral is made after a bonus is earned, it is not constructively received as long as the deferral is made before the amount of the bonus is determined. In addition, deferred compensation is not considered to be constructively received when the terms of the deferral agreement provide for the payment of benefits in case of an unforeseeable emergency.

If a deferred compensation plan is funded, that is, contributions are made by the employer to a trust,

custodial account or escrow fund or an annuity contract is purchased, the contributions are taxable before they are actually received. Such amounts become immediately taxable when the employee's rights in the plan are either funded and nonforfeitable, or funded and transferable. It is at that point that they are constructively received.

### **Gross Income Tax**

#### ***Mutual Fund Distributions*** —

The New Jersey Gross Income Tax Act excludes from gross income interest earned on Federal obligations which are free from state or local taxation under the laws of the United States, and interest earned on obligations of the State of New Jersey or any of its political subdivisions.

The distributions received by shareholders of regulated investment companies, commonly referred to as mutual funds, are considered to be dividends and must be included in gross income. The only exception to this rule is for distributions from New Jersey "qualified investment funds." Such distributions may be excluded from gross income to the extent that they are attributable to interest or gains from Federal or New Jersey exempt obligations. A New Jersey "qualified investment fund" is, in general terms, a mutual fund which has at least 80% of all its investments in Federal or New

Jersey exempt obligations, and which certifies such status to the Division on an annual basis.

### **Sales & Use Tax**

#### ***Retrieving and Photocopying***

***Medical Records*** — The service of retrieving medical records for current or former patients or their representatives is exempt from sales tax as a personal service. If the retrieval service provides several copies as part of the service, that fact could transform the transaction into the sale of tangible property under N.J.S.A. 54:32B-3(a). This would be similar to copying or printing services provided by a printer.

For example, retrieval service X charges for retrieval at a fixed rate plus \$1.00 per page of copied material. For an additional charge, X will also provide its customer with complete sets of the documents retrieved for the customer. The additional charge is \$.50 per page. The bill looks like this:

Medical record retrieval	
at \$60.00 .....	\$60.00
100 pages at \$1.00	
per page .....	100.00
	<u>\$160.00</u>
3 document sets	
at \$.50 per page .....	\$150.00
Sales Tax.....	<u>9.00</u>
Total.....	\$319.00

It is the retrieval service that is exempt from tax, which inciden-

### ***Division of Taxation Seizures*** **(January – March 1995)**

**Note:** Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

<b>County</b>	<b>Name/Address</b>	<b>Seizure Date</b>	<b>Business Type</b>	<b>Status</b>
Atlantic	Bungalow Inn Egg Harbor	03-10-95	Bar	Closed
Bergen	J & J Auto Maintenance Waldwick	01-11-95	Auto Repair	Open
	Galiza, Inc Lyndhurst	03-22-95	Restaurant	Closed
Burlington	Morrisroe, John Mt. Holly	03-29-95	Luncheonette	Open
Camden	Raheny, Inc. Gloucester Twp.	02-08-95	Printing	Open
	Seafood Gallery, Inc. Haddon Heights	03-21-95	Restaurant	Open
Essex	Framba, Inc. Irvington	01-30-95	Bar	Auctioned
	A & W Lounge, Inc. Newark	03-29-95	Bar	Closed
Gloucester	Grey Fox, Inc. Paulsboro	01-06-95	Bar	Open
Hudson	Metro Cafe Jersey City	03-17-95	Luncheonette	Open
Mercer	Mellor, Jr., James W. Ewing Twp.	03-09-95	Auto Repair	Closed
Morris	JC III Landscaping Parsippany	01-19-95	Landscaping	Auctioned
	JGSX2, Inc. Mountain Lakes	02-22-95	Deli & Liquor	Closed
	Donahue, Louise Boonton	03-07-95	Record Shop	Closed
	Oxford Leasing Parsippany	03-09-95	Equip. Leasing	Open
Ocean	Marks Lawn Mower Sales Pt. Pleasant	01-10-95	Mower Repair	Open
	Hamilton Grill New Egypt	02-23-95	Bar	Closed

*taxation seizures - continued from page 11*

<b>County</b>	<b>Name/Address</b>	<b>Seizure Date</b>	<b>Business Type</b>	<b>Status</b>
Passaic	Joreg, Inc. Paterson	02-14-95	Bar	Closed
Salem	Roberta, Inc. Penns Grove	02-01-95	Bar	Open
Somerset	Dewy Meadows Farm, Inc. Bernards	01-11-95	Farm & Store	Open
	The Red Barn Manville	01-27-95	Bar	Open
	Magyar Weaver Somerset	02-08-95	Restaurant	Open
Sussex	Arms & Ammo Branchville	01-23-95	Hunt & Fish	Auctioned
	Fedash Enterprise Vernon	02-01-95	Pizza Restaurant	Open
Warren	Detrick Cabinet Phillipsburg	03-13-95	Cabinets	Open
	McCarthy, William Washington	03-29-95	N/A	Closed

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***Division of Taxation Auctions  
(January – March 1995)***

<b>County</b>	<b>Name/Address</b>	<b>Auction Date</b>	<b>Business Type</b>
Cape May	Corson Brothers, Inc. Marmora	01-12-95	Hardware/Retail
Essex	Framba, Inc. Irvington	03-09-95	Bar
Mercer	1267 C J, Inc. Trenton	01-26-95	Bar
	Pilla, Donald Trenton	03-22-95	Bar
	Bottoms Up Cafe Trenton	03-22-95	Bar
Morris	Lan Dee, Inc. Montville	01-05-95	Bar/Restaurant
	JC III Landscaping Parsippany	03-28-95	Landscaping
Sussex	Arms & Ammo Branchville	02-07-95	Hunt & Fish
Warren	Willin Corp. Washington	02-02-95	Print Shop

*tax briefs - from page 10*

tally includes a photocopying expense. If the service provider also performs printing services, as noted above, he must collect and remit tax just as a printer would.

### **Sales & Use Tax**

**Rental of Exhibition Space** — Owners and operators of exhibition halls should inform all concessionaires, licensees or lessees using space at the exhibition that they are required to be registered as a vendor with the New Jersey Division of Taxation. The Certificate of Authority issued by the Division is required to be attached to the table, stand etc. at the vendor's location. Registered vendors must collect and remit sales tax on all taxable sales. For example, the sale of baseball cards and sports memorabilia is subject to tax.

The charge by the operator for the rental of space is exempt from tax as the rental of real property; any tangible property that is rented to the vendor (counters, displays, tables etc.) is subject to tax.

**Taxability of Furniture Refinishing Supplies** — The Division responded to an inquiry regarding the taxability of furniture refinishing products, such as coatings, thinners, paint removers, surface preparation products, sandpaper, gloves, steel wool, rags, and application equipment sold to professional furniture finishers and refinishers.

The Division explained that gloves are exempt from sales tax as "clothing." N.J.S.A. 54:32B-8.4. Gloves used for work fall within this exemption. N.J.A.C. 18:24-6.3. Sale of stains, varnishes, top coats, and other coatings that

become a permanent part of the property produced for sale by a purchaser, or of the property upon which a purchaser performs taxable services, are considered "sales for resale" and therefore not subject to sales tax. N.J.S.A. 54:32B-2(e)(1)(A) and (B).

All other sales, for example, sales of sandpaper, paint remover, steel wool and spray equipment, are taxable as retail sales of tangible personal property since they do not fall within any of the statutory exemptions. N.J.S.A. 54:32B-3(a). These supplies, whether consumed entirely during a particular job or retained for repeated use, are not resold as such and do not become a physical component of the property sold or refinished by the purchaser. Therefore the resale exemption is inapplicable. The furniture finisher or refinisher is considered the "ultimate consumer" of these products, and sales to them are therefore "retail sales" subject to sales tax.

Any appearance of "double taxation" is the result of some purchasers' practice of charging their customers for items such as rags, equipment, etc., that are used and consumed by the service provider and not actually "resold" to the customer. These are merely elements of expenses incurred in providing a taxable service and generally are not itemized as charges on a customer's bill. However, if furniture finishers choose to charge their customers separately for supplies that are not actually transferred to the customer, they must collect sales tax on these separately stated charges. N.J.S.A. 54:32b-2(d). This practice will not, however, affect the taxability of these

items when the finishers purchase them from their supplier.

**Scaffolding Rental** — The Division received an inquiry regarding the incidence of sales tax on receipts from the installation, rental and dismantling of scaffolding and hoisting equipment, as well as the installation of temporary lighting.

N.J.A.C. 18:24-5.5 provides as follows:

"(a) Taxable services purchased by a contractor are subject to tax unless such services are performed for a purchasing contractor exclusively for use in fulfilling a contract with an exempt organization.

(b) Services subject to tax include, but are not limited to:

1. The fabrication of tangible personal property;
2. Installing tangible personal property, except where such installation results in a capital improvement to real property....;
3. Maintaining, servicing, or repairing real or tangible personal property."

N.J.S.A. 54:32B-3(b)(2)(v) exempts from tax, services rendered in installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, and applies only where the installation services directly result in a capital improvement to real property. It does not apply to services performed for the construction trades that are merely related to the installation, maintenance, servicing or repairing of tangible personal property used in construction or

*taxable for purposes of*

for construction purposes. To be exempt from tax, the services must actually be rendered in installing property that will constitute a capital improvement to real property.

Accordingly, the Division advised that the entire charge for the scaffolding and hoisting equipment and temporary lighting is subject to tax, whether or not any or all of the elements of the transaction are separately stated and identified on the customer's invoice.

**Exempt Purchases by Housing Sponsors** — The Division recently addressed an inquiry from a "housing sponsor" of a low/moderate income housing project, exempt from sales tax under N.J.S.A. 55:14K-34 of the New Jersey Housing and Mortgage Finance Agency Law of 1983. This statute exempts all purchases by the housing sponsor of materials and supplies to be incorporated in or used in maintaining the project. This exemption can be used subsequent to the construction of the project.

Purchases by the housing sponsor of materials and supplies, but not services, directly for use and consumption in maintaining the housing project would be exempt from the tax. Thus, purchases of business personal property for the benefit and use of the housing sponsors, owners, operators, managers or tenants are subject to tax. For example, office furniture and equipment are taxable. The law only provides an exemption for purchases directly used for the benefit of the housing structure. Form ST-4 together with the housing sponsor's sales and use

tax exemption letter should be used to document an exempt purchase.

**Disposal of Recyclable Materials** — A New Jersey business inquired as to the incidence of sales tax on receipts from a disposal service for recyclable materials such as wood, concrete and grass mulch. The service is performed on its own premises, whereby customers will bring in their various forms of recyclable materials and the business will dispose of it for them. The business does not go to the customer's premises to pick up the materials.

The Division indicated that when a company receives material from other persons at the site of their business and charges a fee based on weight, volume, etc., such charges are not subject to sales tax.

**Medical Equipment Used to Provide Health Care** — The Division received an inquiry concerning the sale and rental of medical equipment to health care providers.

N.J.S.A. 54:32B-8.1 provides for the exemption of certain products and durable medical equipment. The last section of the exemption states that equipment and supplies, other than medicines and drugs, which are used by a service provider in providing medical services but not transferred to the purchaser of the service, are taxable retail sales. "Transferred to the purchaser" means that the patient actually leaves the hospital, office, etc. with the product. In general, property purchased for use in diagnostic or procedural applications is subject to tax because it is not transferred to the patient in connection with treatment. □

## **In Our Courts**

**Gross Income Tax Instructions for Computation of Credit Not "Erroneous" — Charles J. Widder v. Director**, 14 N.J. Tax 349 (1994).

The statute at N.J.S.A. 54:49-11b enacted as part of the Taxpayers' Bill of Rights legislation provides that "The Director shall waive the payment of any part of any penalty or any part of any interest attributable to the taxpayer's reasonable reliance on erroneous advice furnished to the taxpayer in writing by an employee of the Division of Taxation acting in the employee's official capacity, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information."

The Tax Court in *Charles J. Widder v. Director*, 14 N.J. Tax 349 (1994) addressed the instructions and the waiver of penalty and interest.

The Court said "Since the New Jersey return instructions plainly state that the numerator of the credit fraction was to include income taxed by the other jurisdiction, the instructions were not 'erroneous' within the meaning of N.J.S.A. 54:49-11b. Plaintiff simply misread those instructions to require the inclusion of his Federal adjusted gross income rather than his New York State adjusted gross income. As the Division's instructions were not erroneous and since the plaintiff has obtained all the relief to which he is entitled under N.J.S.A. 54:49-11a, the Director's assessment of interest at the statutory minimum was affirmed."

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**Insurance Premiums Tax Surtax Applicability to Passenger Automobiles Used Commercially — *Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, Liberty Insurance Corporation v. State of New Jersey, Division of Taxation***, Tax Court - 4738-94; 4740-94; 4741-94; 4743-94; decided February 15, 1995.

At issue was whether the surtax imposed by N.J.S.A. 17:33B-49(a) applies to passenger vehicles used for commercial purposes. The court noted that the definition of "automobile" includes (1) private passenger or station wagon vehicles unless they are used as taxicabs or limousines, (2) commercial vehicles when used for noncommercial purposes and (3) either of the above two categories of vehicle when used on a farm or ranch. It concluded that private passenger vehicles used commercially do not fit this definition and therefore are not subject to the surtax.

**Local Property Tax Assessment of Billboards as Real Property — *R.C. Maxwell Company, tenant, & Scola, Inc., owner, Plaintiffs-Appellants, v. Galloway Township, Defendant-Respondent, & Director, Division of Taxation, Intervenor-Respondent***, Superior Court of New Jersey, Appellate Division, A-2601-93T5, decided April 25, 1995.

R.C. Maxwell Co. & Scola, Inc. appealed the final judgment of the N.J. Tax Court upholding Galloway Township's 1992 omitted assessment of billboards as taxable real property to the Appellate Division, N.J. Superior Court. The

high court affirmed and expounded on the lower court's decision.

As background, the Legislature in order to tax as realty certain property which under prior law could be taxed as personalty provided, via Chapter 117, Laws 1986 [N.J.S.A. 54:4-1], that personal property attached to real property would be exempt from taxation as real property only if it is "not ordinarily intended to be affixed permanently to real property."

In an analysis of the status of billboards as real property for this case, the Superior Court examined the Tax Court's opinion that billboards are "ordinarily intended to be affixed permanently to real property." The disputed billboards were wooden on site constructions having 14 vertical anchors and beams 6 feet below ground. Under scrutiny was the wording "ordinarily intended" as opposed to actually intended. The Superior Court agreed that because property is removable without physical injury to itself or the real property to which it's attached does not preclude that the same property is "ordinarily intended" to be permanently affixed. Further outward appearances are relevant in determining "ordinary intent."

The Superior Court concurred with the Tax Court's finding that even if the disputed billboards were viewed as personal property attached to real property, the tenant-owner did not establish, for example, that they could be moved intact or that salvageable parts were ever reassembled as the same billboard and that they were "not ordinarily intended to be permanently affixed."

**Interest on Refunds — *New York Life Insurance Company v.***

*courts - from page 15*

***Lyndhurst***, Appellate Division, A-2375-93T2, decided March 24, 1995.

The Appellate Division affirmed the Tax Court's ruling that N.J.S.A. 54:3-27.2, the sole source of authority for imposing interest on property tax refunds, provides for interest to be paid at the rate of 5% from the date of payment of tax to the date of refund.

**Denial of Farmland Assessment on Woodlands — *Estell Manor City, Plaintiff, v. Harry Stern, Defendant***, Tax Court of New Jersey, Docket No. 001273-93, decided January 5, 1995.

In this case, Estell Manor City appealed the Atlantic County Board of Taxation's reversing of the local tax assessor's 1992 denial of farmland assessment on six woodland parcels to the New Jersey Tax Court. The City contended that the property owner's woodland management plan itself, although developed by an Environmental Protection Department-approved forester, hadn't satisfied the woodland prerequisites of the Farmland Assessment Act of 1964, as amended, effective 1987 (N.J.S.A. 54:4-23.3 & 3a.); that further the owner hadn't complied with that management plan; that forestry activity on the property was insufficient; and that proof of income or anticipated income from yearly gross sales of tree and forest products was inadequate.

The Department of Environmental Protection's position was that, by statute, it had exclusive authority to approve or disapprove woodland management plans for purposes of the Farmland Assessment Act and that an assessor could not reject a

*continued on page 16*

plan as unacceptable or as noncomplying if DEP sanctioned it. DEP acknowledged, however, that the assessor had final authority to determine whether land otherwise qualified for farmland assessment. Statute also provided that if DEP failed to make a timely definitive decision as to a management plan, the assessor could decide farmland eligibility based on the nonwoodland requirements of the Act.

The taxpayer argued that complying with a woodland management plan alone entitled the property to farmland assessment despite any assessor's determination to the contrary. He also felt that income and other criteria had been substantiated.

Conflicting statements of two foresters retained at different times by the property owner between 1989 and 1993 provided varying opinions about the effectiveness of the management plan and its level of completion and maintenance. The municipal assessor and a forestry witness for the city also testified about deficiencies in the plan and its implementation. Evidence indicated that basic recommendations for boundary marking, timber harvesting, weeding and thinning, and reopening of roads had either not been done or were incomplete.

In conclusion, the Tax Court ruled in favor of the municipality and the assessor reinstating the original assessments totaling \$780,200 and voiding the reduced aggregate assessment of \$40,100 granted by the County Tax Board. In doing so, the Court concurred that there was neither the required income nor sufficient harvesting, fire break construction, removal of diseased

and dying trees etc. to constitute horticultural or agricultural activity and to justify farmland assessment. The Court reasoned that the Act's amendment created two-tier woodland qualification for farmland assessment. Eligibility required both compliance with the revised woodland conditions and all other conditions of the Act regarding acreage, use, income etc. While agreeing that DEP had jurisdiction over the woodland management plans, the Court held that the assessor had final authority to approve or disallow applications for farmland assessment, and that proper recourse for both an assessor or a taxpayer who is dissatisfied with a DEP woodlands evaluation is by appeal of the assessment to the county tax board and the courts.

**Postal Service Denied Property Tax Exemption – *United States Postal Service; Raintree Associates and Rainhold Holding Company v. Freehold Township*, 14 N.J. Tax 266, decided September 27, 1994.**

*courts - from page 16*

Government tenant, United States Postal Service, property owner, Rainhold Holding Company, and ground lessor, Raintree Associates moved for summary judgment for the tax years 1993 and 1994 on the ground that Freehold Township could not include the value of a post office building in the assessments because it is owned by the Federal Postal Service and immune from state and local taxation as such. At issue was immunity as well as who was legally liable for the tax.

The New Jersey Tax Court held that although a tenant, the United States Postal Service had standing to pursue the appeal in the name of the owner because the landlord's, Raintree Associates', interests are represented, in that, a successful appeal substantially reducing the assessment would be to his benefit and that the lessor and owner had no objections.

The Postal Service entered into a 50-year nonrenewable lease with Raintree Associates with an option to buy at its termination at land value only. Failure to do so would destroy its "title" to the building and the property would revert to Raintree Associates. The lease terms also obligated the Postal Service to construct a post office building and to obtain property and liability insurance naming the landlord as an additional insured. A casualty does not relieve the Service from paying rent or permit them to terminate the lease except during the last two years of the term. The terms of the lease strongly suggest a leasehold and that legal ownership of the building is not in the Postal Service.

*continued on page 17*

Leasehold estates may be separately assessed when they have the permanence or perpetuity of a fee interest and the tenant's rights are comparable to those of an owner. However, the Postal Service's lease does not give it comparable rights. There is no provision permitting the local property tax to be charged to and collected from a tenant. The local property tax is not legally imposed on the Postal Service's leasehold estate, and the Federal government's immunity from state taxation is not infringed.

The legal incidence of the local property tax is on the property itself. The tax is charged to and collected from the legal owner of the fee. Where there is separate ownership of the land and improvement, the tax is a lien on the entire fee. Even when a lessee can be said to own a building constructed by him on leased land, the lien for the tax is against the landowner's fee.

Rainhold Holding owns the fee for the entire property subject only to the leasehold interests of Raintree Associates and the Postal Service. It thus has a property interest that is separable from the government's leasehold estate and may be reached by an ad valorem property tax. Therefore, Rainhold Holding has the legal obligation to pay the local property tax. The legal incidence of tax is not on the Postal Service.

In conclusion, the judge rejected the Postal Service's argument and denied the motion for summary judgment.

**Municipal Property Tax Assessment Lists Are Public Record – *Higg-a-Rella, Inc. et al. v. County of Essex et al.***, Superior Court, Appellate Division; Docket

No. A-4830-92T3; decided September 23, 1994.

The Superior Court held that the computerized master tape of municipal property tax assessments generated and maintained by the Essex County Board of Taxation from the individual municipal lists is not a public record under the Right-to-Know Law because it is not required to be maintained. However, it is a public record under common law because it is prepared and maintained by the county board and is used by the county board as an expeditious way to print any of the municipal assessment lists, which are admittedly public when on paper. Thus, it was held that the plaintiffs were entitled to a computer-readable electronic copy of the tax list subject only to payment of a reasonable fee, since the availability of such public information should not be limited by its technological form.

**Tax Sale Certificates Equivalent to Payment of Taxes – *Echelon Glen Cooperative, Inc. v. Voorhees Township***, Superior Court; Docket No. A-6188-92T2; decided August 4, 1994.

The Superior Court held that the purpose of N.J.S.A. 54:3-27, which requires a taxpayer who files an appeal to pay the amount of the contested taxes, is to ensure municipal revenues during the prosecution of a tax appeal. Therefore, the Court decided that it was inappropriate to dismiss a direct appeal to the Tax Court where the municipality did in fact receive those revenues prior to the time the dismissal motion was made. A tax-sale certificate is the equivalent of the payment of taxes; however, while pre-payment

of taxes is not a jurisdictional requirement to a direct appeal to the Tax Court, payment of the contested taxes is a jurisdictional prerequisite for an appeal to the Tax Court from a judgment of a county board of taxation.

**Church Caretaker Residence Not Exempt – *St. Ann's Catholic Church v. Borough of Hampton***, Tax Court of New Jersey, Docket No. 009158-93, decided May 16, 1994.

A local property tax exemption was denied by the Tax Court under N.J.S.A. 54:4-3.6 for an improved lot adjacent to a church cemetery. The residence of a part-time church and cemetery maintenance man and caretaker was not reasonably necessary to the operation of the church. □

## ***In Our Legislature***

### **Gross Income Tax**

**Limited Liability Partnerships** — P.L. 1995, c.96 (signed into law on May 1, 1995) amends the New Jersey Limited Liability Company Act and the Gross Income Tax Act to provide for the creation of limited liability partnerships. This legislation is effective 60 days after enactment.

### **Local Property Tax**

**Membership of Certain County Boards of Taxation** — P.L. 1995, c.30 (signed into law on February 15, 1995) increases from three to five the membership of county boards of taxation in counties of the second class with a population of over 550,000 persons. Middlesex County meets the designation requirements. This legislation

*continued on page 18*

*legislature - from page 17*

is effective immediately.

**School Budget Calendar** — P.L. 1995, c.94 (signed into law on April 25, 1995) gives municipal governments more time to reformulate school board budgets that have been rejected by voters. The date for determination of the budget changed from May 14 to May 19; the date for the table of aggregates changed from May 15 to May 20; and the date for the certification of tax assessments

changed from May 27 to June 3. This law takes effect immediately.

### Motor Fuels

**Rebates for Gasoline Purchases** — P.L. 1995, c.51 (signed into law on March 17, 1995) amends the Motor Fuels Act to provide that a consumer who earns credit through purchases on a credit card may utilize these credits to receive a rebate when that person purchases motor fuels. The bill is effective immediately.

### Urban Enterprise Zones

**Final Four Zones Designated** — P.L. 1993, c.367 (signed into law on January 5, 1994) approved the designation of 10 additional urban enterprise zones. The following is a list of the names and effective dates of the final four zones to be designated under that legislation:

Municipality	Effective Date
Carteret	February 22, 1995
Mount Holly	March 7, 1995
Pleasantville	February 9, 1995
Union City	February 11, 1995

## tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
	2	3	4	5	6	7	8
1	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
9	23	24	25	26	27	28	29
5	30	31					

### July 10

**CWIP-1 Cigarette Tax**—Informational report by wholesalers

**CWIP-2 Cigarette Tax**—Informational report by wholesalers

### July 17

**CBT-100 Corporation Business Tax**—Annual return for accounting period ending March 31

**CBT-150 Corporation Business Tax**—Installment payment of estimated

*continued*

*July 17 - continued*

tax for 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> or 12<sup>th</sup> month of current tax year

**NJ-500 Gross Income Tax**—Employer's semi-monthly, monthly and quarterly returns

### July 20

**CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

**GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel

**MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5 Spill Compensation and Control Tax**—Monthly return

**ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

*continued*

*July 20 - continued*

**ST-50 Sales and Use Tax**—Quarterly return

**ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return

**ST-350 Cape May County Tourism Sales Tax**—Monthly return

**ST-450 Sales and Use Tax—Salem County**—Quarterly Return

**TP-20 Tobacco Products Whole-sale Sales and Use Tax**—Monthly return

**UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

### July 25

**PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

### July 31

**NJ-500 Gross Income Tax**—Employer's semi-monthly and semiannual returns

# august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
1	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
5	27	28	29	30	31		

## August 10

**CWIP-1 Cigarette Tax**—Informational report by wholesalers

**CWIP-2 Cigarette Tax**—Informational report by wholesalers

## August 15

**CBT-100 Corporation Business Tax**—Annual return for accounting period ending April 30

*continued*

## August 15 - continued

**CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

**NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly return

## August 21

**CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

**GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel

**MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5 Spill Compensation and Control Tax**—Monthly return

*continued*

## August 20 - continued

**ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

**ST-51 Sales and Use Tax**—Monthly return

**ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return

**ST-350 Cape May County Tourism Sales Tax**—Monthly return

**ST-451 Sales and Use Tax—Salem County**—Monthly Return

**TP-20 Tobacco Products Whole-sale Sales and Use Tax**—Monthly return

**UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

## August 25

**PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

## August 31

**NJ-500 Gross Income Tax**—Employer's semi-monthly return

# september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
						1	2
1	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
9	17	18	19	20	21	22	23
5	24	25	26	27	28	29	30

## September 11

**CWIP-1 Cigarette Tax**—Informational report by wholesalers

**CWIP-2 Cigarette Tax**—Informational report by wholesalers

## September 15

**CBT-100 Corporation Business Tax**—Annual return for accounting period ending May 31

*continued*

## September 16 - continued

**CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

**NJ-500 Gross Income Tax**—Employer's monthly return

**NJ-1040ES Gross Income Tax**—Declaration of Estimated Tax, Voucher 3 for calendar year filers

## September 20

**CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

**GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel

**MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

*continued*

## September 20 - continued

**SCC-5 Spill Compensation and Control Tax**—Monthly return

**ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

**ST-51 Sales and Use Tax**—Monthly return

**ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return

**ST-350 Cape May County Tourism Sales Tax**—Monthly return

**ST-451 Sales and Use Tax—Salem County**—Monthly Return

**TP-20 Tobacco Products Whole-sale Sales and Use Tax**—Monthly return

**UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

## September 25

**PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

## *from the director's desk*

### **New Division Publications**

As this issue goes to print, the Division is preparing new publications that should be available shortly.

- *S Corporation Q & A*, a comprehensive booklet of questions and answers on S corporation tax issues, includes information on both New Jersey Corporation Business Tax and Gross Income Tax.
- *About New Jersey Taxes*, a new series of short (1 page) publications on topical New Jersey tax issues, primarily sales tax.

To request the *S Corporation Q & A* or any Division publication call our automated service at 800-323-4400 (Touch-tone phones within New Jersey only).

### **Division Deposits Record Revenue**

During the month of April 1995 the Division of Taxation deposited over 1,200,000 checks resulting in revenue in excess of \$1.5 billion.

### **Division Appeals Decision**

The Division is appealing the March 1995 New Jersey Tax Court decision of *Charles A. and Dolores C. Sabino v. Director, Division of Taxation* (Docket #002494-93). The Division's position re-garding unreimbursed business expenses and charitable contributions of a partner is unchanged, pending the decision of the Superior Court of New Jersey.

NJ Tax Question? Send your questions to:

From the Director's Desk  
*New Jersey State Tax News*  
NJ Division of Taxation  
CN 281  
Trenton, NJ 08646-0281